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In The

Supreme Court of the United States

October Term, 1961

No. 303

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

Petitioner,

v.

MacDONALD GALLION, Attorney General of Alabama; MRS. BETTYE FRINK, Secretary of State, State of Alabama,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

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Counsel for Respondents

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MEMORANDUM

The ultimate aim and purpose of this litigation is to determine the right of the State of Alabama to enjoin petitioner from doing business in Alabama. 357 U.S. 449; 360 U.S. 240.

The NAACP is a New York corporation and does not deny that it has been doing business in Alabama without qualifying under state laws as a foreign corporation, although protesting that qualification is not required of it. These are matters which should be first litigated in the state court.

When a defendant is in contempt for the violation of an injunction, he cannot be heard on a motion to dissolve the injunction until he has purged the contempt. *Jacoby v. Goetter, Weil & Co.*, 74 Ala. 427. This situation has never existed in this case for petitioner was adjudged in contempt for failing to produce membership lists and other records under court order.

It is stated in Alabama Supreme Court cases that the power to deny a hearing to a person in contempt does not include the power to refuse to such person in contempt the right to defend in the main case on the merits. *Board of Revenue of Covington County v. Merrill*, 193 Ala. 521, 68 So. 971; *McCollum v. Birmingham Post Co.*, 65 So. 2d 689.

The second contempt proceedings, now pending, charges a violation of the restraining order of the Court in that petitioner organized or controlled the Alabama State Co-ordinating Association for Registration and Voting as a device and subterfuge to cover and hide operations by the NAACP (R. p. 104). This was filed on April 9, 1958.

Under Equity Rule 39, Title 7, page 1257, New Code of Alabama Recompiled 1958, interrogatories are permitted, which must be answered within thirty days after service, unless otherwise ordered by the court; and on failure to answer, the court may compel answer, or may render a decree granting appropriate relief to plaintiff, or may extend the time for such answers to be made. Answers when properly made become evidence when offered by the party taking them.

On February 18, 1960, the State propounded interrogatories to NAACP with respect to its connection with the Alabama State Coordinating Association for Registration and Voting.

On March 15, 1960, on *motion of petitioner*, the time for answering interrogatories was extended by the Court to and including April 18, 1960.

On April 18, 1960, on *motion of petitioner*, the time was again extended by the Court to and including June 18, 1960.

On June 13, 1960, *on motion of petitioner*, the time for answering was again extended to and including August 17, 1960.

On June 23, 1960, the present suit was filed in the Federal District Court.

The petitioner has never answered the interrogatories or been granted further time for answering since August 17, 1960.

On December 14, 1959, after considering the number of pending cases and the business before the Court, a hearing was set for February 23, 1960.

On February 8, 1960, for good cause shown, the February hearing was continued to March 21, 1960.

On March 4, 1960, *on motion of petitioner*, the March 21, 1960 hearing was continued generally to be reset at a later date.

On April 28, 1960, petitioner moved for a hearing on the merits.

On May 25, 1960, the motion was denied because the mandate of the Supreme Court of the United States had not been forwarded to the Circuit Court by the Supreme Court of Alabama.

Petitioner has made no further requests for a hearing in the state courts, and no Federal court order exists which prohibits such a hearing.

The Supreme Court of Alabama did not send down the mandate to the Circuit Court until July 11, 1960. When sent down, it was accompanied by the per curiam opinion reported in 122 So. 2d 396. The Supreme Court of the United States had said in 360 U. S. 240 that the membership disclosure was the sole question before it. The Supreme Court of Alabama said in Ala. , 122 So. 2d 396, that this was not the situation and record as presented to it. The matter was not a simple ministerial act as stated by Judge Tuttle in his dissent.

In addition, it is common knowledge that the Supreme Court of Alabama is 250 cases behind. The present Legislature has been asked to authorize four temporary circuit judges, or retired judges, to help clear the docket. Cases are coming in faster than the court can rule on them.

Petitioner now has a Federal court order which in effect says that the case must be tried in the State court promptly or the Federal court will try it. Under the above facts, it is more than petitioner is entitled to and especially in view of the requested relief when considered in connection with the Anti-Injunction Act, 28 U.S.C.A., Section 2283.

The Petition for writ of Certiorari should be denied.

Respectfully submitted,

MacDonald Gallion
Attorney General of Alabama

Willard W. Livingston
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CERTIFICATE OF SERVICE

I, Gordon Madison, as Assistant Attorney General of the State of Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have mailed copies of the above memorandum with proper address and postage to Robert L. Carter, 20 West 40th Street, New York, New York; Fred D. Gray, 34 North Perry Street, Montgomery, Alabama, and Arthur D. Shores, 1527 Fifth Avenue, North, Birmingham, Alabama, counsel for petitioner on the ____ day of August, 1961.

Gordon Madison
As Assistant Attorney General
of the State of Alabama